



# STATE OF CONNECTICUT

## STATE ETHICS COMMISSION

ADVISORY OPINION NO. 90-31

Application of the Open and Public Contract Requirements  
of Connecticut General Statutes §1-84(i) to A Grant  
Specifically Awarded by the General Assembly

The Secretary of the Office of Policy and Management (OPM), Anthony V. Milano, has asked the Ethics Commission whether the open and public contract requirements of Connecticut General Statutes §1-84(i) were contravened in the course of awarding state funding to Drugs Don't Work.

Drugs Don't Work (The Governor's Partnership to Protect Connecticut's Workplace) was established by Governor O'Neill in 1988. The organization is a non-profit corporation with a board of directors composed of both governmental and private sector officials. Among the public members of the Board are the Governor, the Attorney General, the Majority and Minority Leaders of both houses of the General Assembly, and the Secretary of OPM.

The Fiscal Year 1990/91 State Budget contains two million dollars for Drugs Don't Work. This funding was requested in the Governor's proposed budget as a line item in the OPM budget. The funding request was reviewed by a subcommittee of the General Assembly's Appropriations Committee, and was the subject of a public hearing before the full Committee. The proposed funding was then authorized by the Committee as part of the State Budget, and the Budget, with this item intact, was subsequently approved by both houses of the Legislature and signed by the Governor. The two million dollars at issue is to be processed and distributed by OPM in a manner consistent with the administration of other state grants earmarked for a specific organization. Specifically, the organization must agree to a method of payment and to any restrictions imposed by the State. In the case of Drugs Don't Work, matching private funds must be raised in order to receive the state funding. OPM does not have discretion to give the money to any other organization.

Conn. Gen. Stat. §1-84(i) states, in pertinent part, that:

No public official or state employee or a member of his immediate family or a business with which he is associated shall enter into a contract with the state, valued at one hundred dollars or more, other than a contract of employment as a state employee or pursuant to court appointment, unless the contract has been awarded through an open and public process, including prior public offer and subsequent public disclosure of all proposals considered and the contract awarded.

The above enumerated public officials are members of the Board of the non-profit entity in question, and, therefore, Drugs Don't Work is a "Business...with which [they are] associated " as that term is defined in Conn. Gen. Stat. §1-79(b). As a result, any contract over one hundred dollars between the State and Drugs Don't Work must be entered into pursuant to the requirements of §1-84(i).

The provisions of §1-84(i) are neither overly precise nor inflexible. Rather, as the Commission as previously held, the requirements may be met in a variety of ways depending on the underlying contract at issue. See, e.g., Ethics Commission Advisory Opinion No. 89-10, 50 Conn. L.J. No. 44, p. 3C (May 2, 1989). Ordinarily, the process of awarding a state contract is commenced by an Executive Branch agency offer soliciting bids from the private sector. In such circumstances, the Commission has advised that in order to comply with §1-84(i) the offer must be sufficiently disseminated to give notice to a substantial percentage of those interested in and capable of performing the contract in question. Most frequently, the method of notice has involved advertisement in the media of the geographical area where the contract is to be performed or publication in relevant trade or professional journals.

The grant at issue, however, differs significantly from the standard state contract award. State funding for Drugs Don't Work was authorized by legislative action, not by agency selection. Therefore, a standard §1-84(i) analysis will not suffice in this instance. The language and intent of the provision must, nevertheless, be followed.

After analyzing the grant process in question, the Commission has determined that the procedures employed comply sufficiently with the dictates and principles of §1-84(i). Specifically, the necessary prior public offer consisted of: 1. the notice provided by the inclusion of the grant as a specific

line item in the proposed budget; and 2. the notice and opportunity for comment provided by the public hearing on the matter. Considering the fact that the entity in question was, in effect, created to receive the funding at issue, the possibility of an alternative organization obtaining the grant monies obviously was remote. Nonetheless, the process allowed any such competing organization, as well as critics of the proposed funding, and all other interested parties a reasonable opportunity to participate in and seek to influence the grant decision. Finally, the subsequent public disclosure requirement of §-84(i) clearly has been adhered to in the award and administration of the grant.

In summary, the Ethics Commission holds that, given the unique circumstances, the legislative grant to Drugs Don't Work complied with the open and public process requirements of §1-84(i). To the extent this ruling is inconsistent with the holding in Ethics Commission Advisory Opinion No. 89-24, that Opinion is hereby overruled.

Lastly, the public official/directors of Drugs Don't Work are reminded that since the entity is a "Business... with which associated" they may not take official action which directly and specifically benefits that entity. Ethics Commission Advisory Opinion No. 90-5, 51 Conn. L.J. No. 32, p. 8C (February 6, 1990). The Ethics Commission has previously stated that it believes it is inappropriate to apply the provisions of the Code of Ethics to state servants who provide uncompensated service as directors of non-profit entities. Nonetheless, until the General Assembly amends the definition of "Business...with which associated", there is, of course, no alternative but to apply the requirements of the Code as currently drafted.

By order of the Commission,

*Rabbi Michael Menitoff*

Rabbi Michael Menitoff  
Chairperson

Dated 11-5-90

